

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13487, of Jeffrey E. Gilbert, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to use all floors of the subject premises as office uses in an SP-1 District at the premises 2005 Massachusetts Avenue, N.W., (Square 94, Lot 14).

HEARING DATE: May 13, 1981
DECISION DATE: June 3, 1981

DISPOSITION: The Board GRANTED the application by a vote of 3-1 (Walter B. Lewis, and Connie Fortune to grant; Charles R. Norris to grant by proxy; Douglas J. Patton opposed; William F. McIntosh not voting, not having heard the case).

FINAL DATE OF ORDER: August 31, 1981

ORDER

On September 14, 1981, the opposition, Dupont Circle Advisory Neighborhood Commission - 2B, pursuant to Section 5.41 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment, filed a motion for Reconsideration and Rehearing. The grounds for the motion were that the Board had erred in fact and law in concluding that the subject lessee is a non-profit organization "organized and operated exclusively for literary purposes" under Section 1201 of the Zoning Regulations. The Board considered the Final Order, the subject motion and the reply of the applicant thereto. Section 5.45 of the Supplemental Rules provides that "Any motion to reconsider an application or appeal made pursuant to 5.41 or 5.44 must be approved by at least four (4) affirmative votes." A motion to Stay the effect of the Order, reopen the record and rehear on the sole issue as to whether a trade association is a non-profit organization as contemplated by the Zoning Regulations was supported by only three affirmative votes. The Chairman therefore ruled that the motion failed for a lack of four affirmative votes. Accordingly, it is ORDERED that the Motion for Reconsideration and Rehearing is DENIED.

VOTE: 3-2 (Walter B. Lewis, William F. McIntosh and Douglas J. Patton in FAVOR; Charles R. Norris and Connie Fortune OPPOSED).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 12 NOV 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13487 of Jeffrey E. Gilbert, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to use all floors of the subject premises as office uses in an SP-1 District at the premises 2005 Massachusetts Avenue, N.W., (Square 94, Lot 14).

HEARING DATE: May 13, 1981
DECISION DATE: June 3, 1981

FINDINGS OF FACT:

1. The subject property is located on the north side of Massachusetts Avenue and is the second property west from 20th Street, in an SP-1 Zone District at premises known as 2005 Massachusetts Avenue, N.W.

2. The subject site contains 1,953 square feet. It is developed with a large row house of three stories and English basement, occupying approximately eighty percent of the site. The upper two floors are stepped back from the rear of the building. To the rear of the site is a four foot wide public alley leading to 20th Street.

3. The building was previously used as a transient rooming house consisting of fifteen rooms under Certificate of Occupancy No. B-89918. Since June, 1980, the building has been vacant and unoccupied.

4. The applicant proposes to use the building as offices for a non-profit organization in accordance with the SP provisions of the Zoning Regulations.

5. The total F.A.R. of the site is just under the maximum 2.5 allowed in SP-1 for professional offices.

6. The intended occupant of the subject premises is the Association of American Publishers, Incorporated, a non-profit organization. This organization would employ nine persons, only one of whom drives to work approximately fifty percent of the time.

7. Immediately adjacent to the west of the subject site is a large row house structure housing four apartment units. To the east on the corner of 20th Street is a newer two-story structure on a lot of comparable size with a law firm on the first floor and a residential unit on the second floor. Immediately to the rear beyond a four-foot-wide public alley is the Colombian Embassy. The Embassy Row Hotel begins fifty-five feet west of the subject site. The area further north is largely residential with turn-of-the century row houses, a few of which are used for embassies, chanceries, and professional office space. South of Massachusetts Avenue, commercial uses predominate. An entrance to the Dupont Circle Metro stop is 200 feet north of the site on 20th Street.

8. The use, height, bulk and design of the building are in harmony with nearby existing uses and structures because the subject property is an existing older building which is part of the existing fabric of the area. No new construction is involved. The proposed use would be generally consistent in intensity and character with neighboring properties.

9. The proposed use will not create dangerous or other objectionable traffic conditions. Although the use will generate some automobile traffic without parking facilities to accommodate it, the parking impact will not necessarily be greater than that of other permitted uses on this site.

10. This section of Massachusetts Avenue is a heavily traveled arterial. Traffic is somewhat constrained in front of the subject site as it meets Dupont Circle. A bus stop twenty feet west of the site is very active as a main subway/bus transfer. An entrance to the Dupont Circle Metro stop is 200 feet north of the site on 20th Street. These factors and the activity at the nearby Embassy Row Hotel create an active environment throughout the day.

11. There is no parking requirement for the proposed use due to an existing parking credit. There is no reasonable way to provide on-site parking due to the lot occupancy and lack of sufficient alley access.

12. The SP District is meant to "preserve and protect areas adjacent to commercial districts which contain a mix of row houses, apartments, offices, and institutions." In this particular SP District there are, however, several new buildings, the largest of which is the Embassy Row Hotel. The only remaining undeveloped site is adjacent to and owned by the Indonesian Embassy at the southwest corner of 21st Street and Massachusetts Avenue. Given the FAR restriction of the SP-1 zoning, the built environment is relatively stable in this area, as there is little incentive for demolition and redevelopment.

13. The subject site is located within both the Dupont Circle and Massachusetts Avenue Historic Districts. The Joint Committee on Landmarks has approved plans for the exterior renovation of the premises. The interior work necessary for the conversion to office space is predominantly cosmetic on the first, second, and third floors. More extensive work is necessary on the basement floor.

14. The applicant testified that because of structural difficulties, the historic character of the building, and the location of the building in a predominantly non-residential area, the best use for the building is the proposed office use by a nonprofit organization.

15. A representative of the Association of American Publishers, Incorporated, the proposed tenant of the building, testified at the public hearing as to the proposed use. He testified that the Association

is registered with the Internal Revenue Service as a nonprofit organization, that the proposed use will be of relatively low intensity, and that visitors to the site would be infrequent and would probably arrive by public transportation.

16. Mr. Robert Morris, traffic consultant on behalf of the applicant, testified that there would be no adverse impact on the traffic operations resulting from the proposed use, and that in spite of a shortage of parking in the area, the minimal parking demand that would be generated by the office use can be accommodated. With the excellent transit service at the subject site, and with Metrorail directly across 20th Street, no parking problem should arise as a result of the proposed use. The Board so finds.

17. Advisory Neighborhood Commission 2B by report dated May 11, 1981, and by testimony at the public hearing, opposed the application on four grounds:

- A. The use proposed is not that of a nonprofit organization within the meaning of Section 1201 of the Zoning Regulations or other type of user qualified under Paragraph 4101.44 of the Zoning Regulations. The proposed use appears to be by a trade association for ordinary commercial office use.
- B. The use proposed is not in harmony with uses of neighboring property.
- C. The application fails to establish the availability of parking necessary to support office use at the location. The site and the neighborhood are totally devoid of parking facilities. There are no commercial parking facilities available for public use within 800 feet. The site also lacks loading space or even curb side standing or stopping space for clientele or services.
- D. The change of use is contrary to the guidelines established by the Zoning Commission in the Dupont Circle rezoning case, Order No. 282, Case No. 76-24, June 14, 1979, particularly Finding No. 10 on page 8 and the various findings on page 5.

The ANC also argued that the building could be and should be used for residential purposes and that the proposed use would be inappropriate because it would be a further intrusion of office use into an area that already has a negligible amount of residential use left.

18. The Dupont Circle Citizens Association opposed the application on basically the same grounds cited by the ANC.

19. As to the issues and concerns raised by the ANC and the Citizens Association, the Board finds as follows:

- A. The applicant is not requesting a use variance and is, therefore, not required to prove that it cannot use the premises for residential purposes. The office of a non-profit organization is permitted in the SP-1 District as a special exception, and the Board is required to find that the applicant meets the specific criteria of Paragraph 4101.44 and Sub-section 8207.2. The Board has so found.
- B. Based on the information filed by the applicant on May 20, 1981, the Association of American Publishers is registered with the Internal Revenue Service as a non-profit organization. The Board further finds that the organization is "an organization organized and operated exclusively for literary purposes" as required by the Zoning Regulations and thus fits within the meaning of nonprofit organization as defined in Section 1201 of the Zoning Regulations.
- C. In previous findings, the Board described the previous use of the site as well as the use of adjoining sites. The Board finds that this block is predominantly used as offices, and that the proposed office use is not an intrusion into a predominantly residential neighborhood. The Board finds that the proposed use would be generally consistent in intensity and character with neighboring properties.
- D. The Board finds that the use will not create dangerous or other objectionable traffic conditions. Although the use will generate some automobile traffic without parking facilities to accommodate it, the parking impact will not necessarily be greater than that of other permitted uses on the site. Given the excellent access to public transportation, particularly the 200 foot distance to the subway entrance, office use may create less demand for parking than residential use other than single family. Further, as the testimony of the representative of the Association of American Publishers indicated, the proposed use will only create a demand for one parking space. The applicant stated that he would be willing to lease this parking space from nearby parking facilities.

Finally, the proposed use is expected to generate minimal visitor traffic.

20. The Office of Planning and Development, by report dated May 8, 1981 and by testimony given at the public hearing, supported the application on the grounds that the proposed special exception complies with Paragraph 4101.44 of the Zoning Regulations, and that its approval will not tend to adversely affect the use of neighboring properties. The Board so finds.

21. The Department of Transportation by report dated May 19, 1981, reported that "because of the close proximity of the site to excellent

transit service and with continuation of the present carpooling practice, on-site parking for employees is not needed". The DOT further stated that it did not anticipate that measurable adverse impact will be imposed by this development on the surrounding street system in the area. The Board concurs.

22. There was no other opposition to the granting of this application registered at the public hearing.

23. There are six letters on file in support of the application.

CONCLUSIONS OF LAW AND OPINION:


Based on the foregoing Findings of Fact and the evidence of record the Board concludes that the requested relief is a special exception the granting of which requires the applicant to prove that it has complied with the requirements of Sub-section 8207.2 and Paragraph 4101.44 of the Zoning Regulations. The Board concludes that the applicant has met the burden of proof and that the proposed use meets the specifications of the Zoning Regulations. The use, height, bulk, and design of the structure will be in harmony with the use, height, bulk, and design of the block within which it is located. The low level usage of the structure will not create any dangerous or objectionable traffic conditions.

The Board is of the opinion that it has given great weight to the issues and concerns of the ANC and the Citizens Association. The Board concludes that it is not appropriate to take into account the guidelines and findings cited by the Zoning Commission in Order No. 282. Those findings and guidelines were the basis on which the Commission found its decisions as to whether and how to rezone the general Dupont Circle area. Once the rezoning decision was made, and the subject property was zoned SP-1, the Board's jurisdiction is limited to applying the terms of the Regulations for the SP-1 District. Office use is permitted as a special exception, and the Board has previously concluded that the applicant is entitled to the granting of such an exception in this case.

The Board further concludes that the approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to effect adversely the use of neighboring property in accordance with said regulations and map. Accordingly, it is ORDERED that this application is hereby granted.

VOTE: 3-1 (Walter B. Lewis and Connie Fortune to grant; Charles R. Norris to grant by proxy; Douglas J. Patton opposed; William F. McIntosh not voting, not having heard the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 31 AUG 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.